

APPLICATION FOR PERMISSION
UNDER SECTION 16 OF THE TOWN PLANNING ORDINANCE

APPLICATIONS NO. A/NE-LYT/810 and 811

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|----------------------------|---|--|
| <u>Applicants</u> | : Mr PANG King Yin Mr PANG Chun Pui | (Application No. A/NE-LYT/810) (Application No. A/NE-LYT/811) |
| | all with Mr YIP Tin Sang as Power of Attorney | |
| <u>Sites</u> | : Lot 1769 in D.D. 76 Lot 1776 in D.D. 76 | (Application No. A/NE-LYT/810) (Application No. A/NE-LYT/811) |
| | all in Ma Mei Ha Leng Tsui, Fanling, New Territories | |
| <u>Site Areas</u> | : 121.4m ² (about) 121m ² (about) | (Application No. A/NE-LYT/810) (Application No. A/NE-LYT/811) |
| <u>Lease</u> | : Block Government Lease (demised for agricultural use) | |
| <u>Plan</u> | : Approved Lung Yeuk Tau and Kwan Tei South Outline Zoning Plan (OZP) No. S/NE-LYT/19 | |
| <u>Zonings</u> | : <u>Application No. A/NE-LYT/810</u> “Agriculture” (“AGR”) | |
| | <u>Application No. A/NE-LYT/811</u> “AGR” | (about 58% of the Site) |
| | “Village Type Development” (“V”) | (about 42% of the Site) |
| <u>Applications</u> | : Two Proposed Houses (New Territories Exempted Houses (NTEHs) – Small Houses) | |

1. The Proposals

- 1.1 The applicants, who claim themselves as indigenous villagers of Fanling Heung, Fanling¹, seek planning permission to build a NTEH (Small House) on each of the application sites (the Sites) in Ma Mei Ha Leng Tsui, Fanling (**Plan A-1**). While the site under Application No. A/NE-LYT/810 falls entirely within “AGR” zone, the site under Application No. A/NE-LYT/811 falls partly within “AGR” and partly within “V” on the OZP. According to the Notes of the OZP, while ‘House (NTEH only)’ is always

¹ As advised by District Lands Officer/North, Lands Department (DLO/N, LandsD), the eligibility of the applicant of application No. A/NE-LYT/810 for Small House concessionary grant has been ascertained while the eligibility of the applicant of application No. A/NE-LYT/811 is yet to be ascertained.

permitted within the “V” zone, such use within the “AGR” zone is a Column 2 use, which requires planning permission from the Town Planning Board (the Board). The Sites are vacant and partly covered with grass.

1.2 Details of each of the proposed NTEHs (Small Houses) are as follows:

| | | |
|-------------------|---|----------------------|
| Total Floor Area | : | 195.09m ² |
| Number of Storeys | : | 3 |
| Building Height | : | 8.23m |
| Roofed Over Area | : | 65.03m ² |

The applicants indicate that the uncovered area of the Sites would be used for garden and circulation area. The layouts of the proposed Small Houses under applications No. A/NE-LYT/810 and 811 are shown in **Drawings A-1 to A-2** respectively.

1.3 Each of the Sites is the subject of a previously approved application submitted by the same applicant under the current application for the same use. Details of the previous applications are set out in paragraphs 5.1 to 5.4 below. Compared with the previous applications, the major development parameters and layouts of the Small Houses are the same as the current ones.

1.4 In support of the applications, the applicants have submitted Application Forms with attachments received on 28.9.2023 (**Appendices Ia and Ib**).

2. Justifications from the Applicants

The justifications put forth by the applicants in support of the applications are detailed at **Appendices Ia to Ib**, and summarized as follows:

- each of the Sites is the subject of a previously planning application (No. A/NE-LYT/579 and 709). As LandsD has not finished processing the Small House applications in the last four years, a fresh application is required.

3. Compliance with the “Owner’s Consent/Notification” Requirements

The applicants are the sole “current land owners” of the respective lots at the Sites. Detailed information would be deposited at the meeting for Members’ inspection.

4. Assessment Criteria

The set of Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories (the Interim Criteria) was first promulgated on 24.11.2000. The latest set of Interim Criteria, which was promulgated on 7.9.2007, is at **Appendix II**.

5. Previous Applications

5.1 Each of the Sites for application No. A/NE-LYT/810 and 811 is the subject of previously approved application for the same use.

- 5.2 Application No. A/NE-LYT/810 is the subject of a previous application No. A/NE-LYT/579 submitted by the same applicant as the current application which was approved by the Rural and New Town Planning Committee (the Committee) on 6.11.2015 mainly on sympathetic consideration of being in line with the Interim Criteria in that more than 50% of the footprint of proposed Small House fell within the village 'environ' ('VE') of Ma Mei Ha Leng Tsui and Leng Pei Tsuen and there was insufficient land within the 'V' zone of the same village cluster to meet the Small House demand at the time of consideration; the site was in close proximity to the existing village houses, Small Houses under construction and approved Small House application sites; and concerned government departments had no objection to the application. Relevant planning permission lapsed on 7.11.2019².
- 5.3 Application No. A/NE-LYT/811 is the subject of three previously approved applications (No. A/NE-LYT/327, 550 and 709) for the same use. Application No. A/NE-LYT/327 submitted by a different applicant was approved by the Committee on 28.4.2006 mainly on the same sympathetic considerations as detailed in paragraph 5.2. Applications No. A/NE-LYT/550 and 709 submitted by the same applicant as the current application No. A/NE-LYT/811 were approved by the Committee on 17.10.2014 and 6.9.2019 respectively mainly on the sympathetic considerations in that the site was the subject of a previous approval and same considerations as detailed in paragraph 5.2. The latest planning permission lapsed on 7.9.2023.
- 5.4 Details of the previous applications are summarized at **Appendix III** and the locations are shown on **Plan A-2a**.

6. Similar Applications

- 6.1 There has been 68 similar applications for Small House development within/partly within the same "AGR" zone in the vicinity of the Site in the Lung Yeuk Tau and Kwan Tei area since the first promulgation of the Interim Criteria on 24.11.2000.
- 6.2 Among the 68 applications, 29 were approved by the Committee between April 2003 and May 2014 before the formal adoption of a more cautious approach by the Board since August 2015³. The remaining 39 applications were approved by the Committee thereafter mainly on the grounds that the applications generally complied with the Interim Criteria in that more than 50% of the footprints of the proposed Small Houses fell within the 'VE' and there was a general shortage of land within the "V" zone of the same village in meeting the Small House demand at the time of consideration; the sites were the subject of previous approvals and/or there were Small House applications approved in the vicinity at different stages of development nearby which formed a new village cluster in the locality; the applications were not incompatible with the surrounding rural and village environment; and the applications would not induce significant adverse impact on the surrounding areas.

² According to DLO/N of LandsD, the Small House application was approved on 27.6.2019. Offer letters were issued on 29.4.2022 and the acceptance letter was received on 6.5.2023, but the building licences has yet to be executed. However, the previously approved application No. A/NE-LYT/579 has lapsed before the promulgation of Town Planning Board Guidelines No.35D Extension of Time for Commencement of Development (TPB PG-No. 35D) and hence not applicable to this application.

³ Among others, in considering whether there is a general shortage of land in meeting Small House demand, more weighting shall be put on the number of outstanding Small House applications provided by LandsD.

- 6.3 Details of the similar applications are summarized at **Appendix IV** and their locations are shown on **Plan A-2a**.

7. The Sites and Their Surrounding Areas (Plans A-2 to A-4)

7.1 The Sites are:

- (a) partly vacant and partly covered with grass for application No. A/NE-LYT/810 while the site for application No. A/NE-LYT/811 is paved;
- (b) accessible via a local track leading to Sha Tau Kok Road; and
- (c) located to the west of the existing village proper of Ma Mei Ha Leng Tsui and Leng Pei Tsuen.

7.2 The surrounding areas are of rural landscape character comprising village houses, active/fallow agricultural land, tree clusters, vegetated areas and vacant land.

8. Planning Intention

The planning intention of the “AGR” zone in the Lung Yeuk Tau and Kwan Tei South area is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes. It is also intended to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes.

9. Comments from Relevant Government Departments

9.1 The applications have been assessed against the assessment criteria at **Appendix II**. The assessment is summarized in the following table:

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|----|---|-------------------|------------------|--|
| 1. | Within “V” zone? | | | |
| | - The Sites (Application No. A/NE-LYT/810) | - | 100% | The site under application No. A/NE-LYT/810 falls entirely within “AGR” zone. |
| | (Application No. A/NE-LYT/811) | 42% | 58% | The site under application No. A/NE-LYT/811 falls partly within “AGR” and partly within “V” zones. |
| | - Footprints of the proposed Small Houses (Application No. A/NE-LYT/810) | - | 100% | |
| | (Application No. A/NE-LYT/811) | 40.5% | 59.5% | |

[illegible]

⁴ Among the 36 outstanding Small House applications, six of them fall within the “V” zone and 30 straddle or fall outside the “V” zone. For those 30 applications straddling or falling outside the “V” zone, 18 of them have obtained valid planning approvals from the Board.

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|--|------------|-----------|--|
| 5. | Compatible with surrounding area/development? | ✓ | | The proposed Small Houses are not incompatible with the surrounding rural environment comprising village houses, tree clusters and vegetated areas (Plan A-2a). |
| 6. | Within Water Gathering Grounds (WGGs)? | | ✓ | |
| 7. | Encroachment onto planned road networks and public works boundaries? | | ✓ | |
| 8. | Need for provision of fire service installations and emergency vehicular access (EVA)? | | ✓ | Director of Fire Services (D of FS) has no in-principle objection to the applications. The applicants are reminded to observe 'New Territories Exempted Houses – A Guide to Fire Safety Requirements' published by LandsD. |
| 9. | Traffic impact? | ✓ | | Commissioner for Transport (C for T) advises that Small House developments should be confined within the "V" zone as far as possible. Although additional traffic generated by the proposed developments is not expected to be significant, such type of developments outside the "V" zone, if permitted, will set an undesirable precedent case for similar applications in the future. The cumulative adverse traffic impact could be substantial. Notwithstanding the above, each application only involving the construction of one Small House on each Site could be tolerated. |
| 10. | Drainage impact? | | ✓ | Chief Engineer/Mainland North, Drainage Services Department (CE/MN, DSD) has no objection to the applications. |
| 11. | Sewerage impact? | | ✓ | Director of Environmental Protection (DEP) advises that in view of the small scale of the proposed developments, the applications alone are unlikely to cause major pollution. |

| | <u>Criteria</u> | <u>Yes</u> | <u>No</u> | <u>Remarks</u> |
|-----|----------------------------------|------------|-----------|---|
| 12. | Landscaping impact? | | ✓ | Chief Town Planner/Urban Design and Landscape, Planning Department (CTP/UD&L, PlanD) has no objection to the applications from the landscape planning perspective. Significant adverse impact on the landscape character and the existing landscape resources within the Sites arising from the proposed use is not anticipated. |
| 13. | Local objections conveyed by DO? | ✓ | | District Officer (North), Home Affairs Department (DO(N), HAD) advises that he has consulted the locals. The Chairman, the First Vice-Chairman and the Vice-Chairman of Fanling District Rural Committee object to the applications on the grounds that the applications would induce adverse drainage and traffic impacts on the surrounding areas. The Chairman of Lung Shan Area Committee has no comment on the applications while the incumbent North District Councilor of N18 Constituency, the Indigenous Inhabitant Representative and the Resident Representative of Leng Tsui have not replied to HAD. |

9.2 Comments from the following government departments have been incorporated in paragraph 9.1 above. Details of comments from government departments are at **Appendix V**.

- (a) DLO/N, LandsD;
- (b) CE/MN, DSD;
- (c) DEP;
- (d) DAFC;
- (e) CTP/UD&L, PlanD;
- (f) D of FS;
- (g) C for T;
- (h) DO(N), HAD; and
- (i) Chief Highway Engineer/New Territories East, Highways Department (CHE/NTE, HyD)

9.3 The following government departments have no objection to/no comment on the applications:

- (a) Chief Engineer/Construction, Water Supplies Department (CE/C, WSD); and
- (b) Project Manager (North), North Development Office, Civil Engineering and Development Department (PM(N), CEDD).

10. Public Comments Received During Statutory Publication Period (Appendix VI)

On 6.10.2023, the applications were published for public inspection. During the first three weeks of statutory public inspection period, four public comments were received for application No. A/NE-LYT/810 and five public comments (4 of them are same as the ones for application No. A/NE-LYT/810) were received for application No. A/NE-LYT/811. The Chairman of Sheung Shui District Rural Committee indicates no comment on both applications. The Chairman, the First Vice-Chairman, the Vice-Chairman of Fanling District Rural Committee raise objection to both applications mainly on the grounds that the applications would induce adverse drainage and traffic impacts on the surrounding areas. The remaining public comment submitted by an individual objects to application No. A/NE-LYT/811 mainly on the grounds that the lot previously surrendered to the government should be retained for road purpose and the proposed use would induce traffic impacts to the existing neighbourhoods.

11. Planning Considerations and Assessment

- 11.1 The applications are for a proposed Small House at each of the Sites. While the Site under application No. A/NE-LYT/810 falls entirely within “AGR” zone, the site under application No. A/NE-LYT/811 falls partly within “AGR” and partly within “V” zones on the OZP. The proposed developments are not in line with the planning intention of the “AGR” zone as set out in paragraph 8 above. While DAFC has no strong view against the application No. A/NE-LYT/811, he does not support the application No. A/NE-LYT/810 from the agricultural perspective as the site possesses potential for agricultural rehabilitation. Agricultural activities are active in the vicinity and agricultural infrastructures such as road access and water source are also available. The Site can be used for agricultural activities such as open-field cultivation, greenhouses and plant nurseries, etc.
- 11.2 The site under application No. A/NE-LYT/810 is partly vacant and partly covered with grass while the site under application No. A/NE-LYT/811 is paved (**Plans A-2a and A-4a to A-4c**). The village proper of Ma Mei Ha Leng Tsui and Leng Pei Tsuen is located to the east and there are approved Small House applications in the vicinity of the Sites. The proposed Small Houses are not incompatible with the surrounding rural setting comprising village houses, fallow agricultural land, tree clusters and vegetated areas. As significant adverse impact on the landscape character and the existing landscape resources within the Sites arising from the proposed use is not anticipated, CTP/UD&L, PlanD has no objection to the applications from the landscape planning perspective. C for T considers that Small House developments should be confined within the “V” zone as far as possible but given that each application only involves development of one Small House on each Site, the applications could be tolerated from traffic impact perspective. Other relevant government departments consulted, including DEP, CE/C of WSD, CE/MN of DSD and D of FS, have no objection to or no comment on the applications.
- 11.3 Regarding the Interim Criteria (**Appendix II**), the footprints of the proposed Small Houses fall entirely within the ‘VE’ of Ma Mei Ha Leng Tsui and Leng Pei Tsuen. DLO/N of LandsD advises that the number of outstanding Small House applications for Ma Mei Ha Leng Tsui and Leng Pei village cluster is 36 while the 10-year Small House demand forecast is 132. Based on PlanD’s latest estimate, about 0.64 ha (equivalent to 25 Small House sites) is available within the “V” zone concerned (**Plan A-2b**). In this regard, there is insufficient land within the “V” zone to meet the 36 outstanding Small

House applications. As such, the applications generally comply with the Interim Criteria as the footprints of the Small Houses fall entirely within the ‘VE’ and there is a general shortage of land within the “V” zone in meeting the Small House demand (solely the number of outstanding Small House applications). It is also noted that there are new Small Houses under construction and approved Small House applications at different stages of development nearby, the implementation of which are forming a new village cluster in the locality (**Plan A-2a**). Besides, each of the Sites is the subject of a previously approved application submitted by the same applicant under the current application for the same use as set out in paragraphs 5.1 to 5.4 above. Compared with the previous applications, the major development parameters and layouts of the Small Houses are the same as the current ones. DLO/N advises that building licence under one of the application has yet to be executed and the other one is still under processing. In this regard, sympathetic consideration might be given to the applications.

- 11.4 There has been 68 similar applications for Small House developments in the vicinity of the Site (**Plan A-2a**). Among them, 39 applications were approved by the Committee between November 2015 and August 2023 after the Board’s formal adoption of a more cautious approach mainly on the grounds as detailed in paragraph 6.2. The planning circumstances of the current applications are similar to those approved applications (e.g. A/NE-LYT/753, 765, 778-786, 802, and etc.) in that there is a general shortage of land within “V” zone in meeting the Small House demand and there are Small House applications approved in the vicinity, the implementation of which are forming a new village cluster in the locality and the site is subject of previous approval, etc.
- 11.5 Regarding the public comments in paragraph 10, government departments’ comments and planning assessments above are relevant.

12. Planning Department’s Views

- 12.1 Based on the assessments made in paragraph 11 and having taken into account the public comments mentioned in paragraph 10, the Planning Department has no objection to the applications.
- 12.2 Should the Committee decide to approve the applications, it is suggested that the permissions shall be valid until 25.8.2027, and after the said date, the permissions shall cease to have effect unless before the said date, the developments permitted are commenced or the permissions are renewed. The recommended advisory clauses are attached at **Appendix VII**.
- 12.3 Alternatively, should the Committee decide to reject the applications, the following reason for rejection is suggested for Members’ reference:
- the proposed development is not in line with the planning intention of the “AGR” zone which is primarily to retain and safeguard good quality agricultural land/farm/fish ponds for agricultural purposes and to retain fallow arable land with good potential for rehabilitation for cultivation and other agricultural purposes. There is no strong planning justification in the submission for a departure from the planning intention.

13. Decision Sought

- 13.1 The Committee is invited to consider the applications and decide whether to grant or refuse to grant the permissions.
- 13.2 Should the Committee decide to approve the applications, Members are invited to consider the approval condition(s) and advisory clause(s), if any, to be attached to the permission, and the date when the validity of the permissions should expire.
- 13.3 Alternatively, should the Committee decide to reject the applications, Members are invited to advise what reason(s) for rejection should be given to the applicants.

14. Attachments

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|----------------------------|---|
| Appendices Ia to Ib | Application Forms with attachments received on 28.9.2023 |
| Appendix II | Relevant Interim Criteria for Consideration of Application for New Territories Exempted House (NTEH)/Small House in New Territories |
| Appendix III | Previous Applications |
| Appendix IV | Similar Applications |
| Appendix V | Detailed Comments from Relevant Government Departments |
| Appendix VI | Public Comments |
| Appendix VII | Recommended Advisory Clauses |
| Drawings A-1 to A-2 | Proposed Small Houses Layout Plans |
| Plan A-1 | Location Plan |
| Plan A-2a | Site Plan |
| Plan A-2b | Estimated Amount of Land Available for Small House Development within the “V” zone of Ma Mei Ha Leng Tsui and Leng Pei Tsuen |
| Plan A-3 | Aerial Photo |
| Plans A-4a and 4c | Site Photos |

**PLANNING DEPARTMENT
NOVEMBER 2023**